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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
08/995,200	07/10/97	WOLFINBARGER	L 152-112P-CIP

QM31/0910

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EXAMINER	
BLYVEIS, D	
ART UNIT	PAPER NUMBER
3734	#6

DATE MAILED: 09/10/98

Please find below a communication from the EXAMINER in charge of this application.

Commissioner of Patents

Office Action Summary

Application No.
08/895,203

Applicant(s)
Wolfenbarger, Jr.

Examiner
Deborah Blyveis

Group Art Unit
3734



☐ Responsive to communication(s) filed on _____

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-34 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-3, 5-7, and 18-34 is/are rejected.

☒ Claim(s) 4 and 8-17 is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 7, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Elledge et al.

Elledge et al. discloses a method for producing a cleaned tissue graft by sonicating the tissue graft with detergents, see col. 3, lines 45-60.

3. Claims 20-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Livesey et al..
Livesey et al. discloses a method for cleaning soft tissue with detergents and incubation, see col. 9, lines 37-55.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

Art Unit:

5. Claims 2, 5, and 6 rejected under 35 U.S.C. 102(e) as being anticipated by Morse et al ('626').

Morse et al. discloses a method for removing bone marrow whereby a high pressure solvent is introduced into the bone that inactivates bacteria, fungi, virus, and parasites, see ex. 5. by Morse et al. ('662').

Morse et al. discloses a method whereby negative pressure is applied in a vacuum at less than atmospheric pressure to remove bone marrow, see ex. 7, 8 and abstract. This method decreases initial viral and bacterial particles by applying a bacteriocidal and viricidal agent.

Double Patenting

6. The non-statutory double patenting rejection, whether of the obviousness-type or non-obviousness-type, is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent. *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); and *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(b) and © may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.78(d).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Art Unit:

7. Claims 1-19 are provisionally rejected under the judicially created doctrine of double patenting over claims copending Application No. 08/646,519 and 08/646,203. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: they both claim the same method of ultrasonic and negative pressure cleaning of a graft.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Allowable Subject Matter

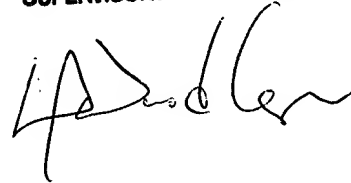
8. Claims 4 and 8-17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Questions regarding faxes or the status of this application should be directed to the receptionist whose telephone number is (703) 308-0858.

Art Unit:

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah Blyveis whose telephone number is (703) 308-2110. On April 1, 1998, art unit 3306 became art unit 3734, and all correspondence should be addressed accordingly.

WYNN WOOD COGGINS
SUPERVISORY PATENT EXAMINER



d.b. *08 9/4/98*

September 4, 1998